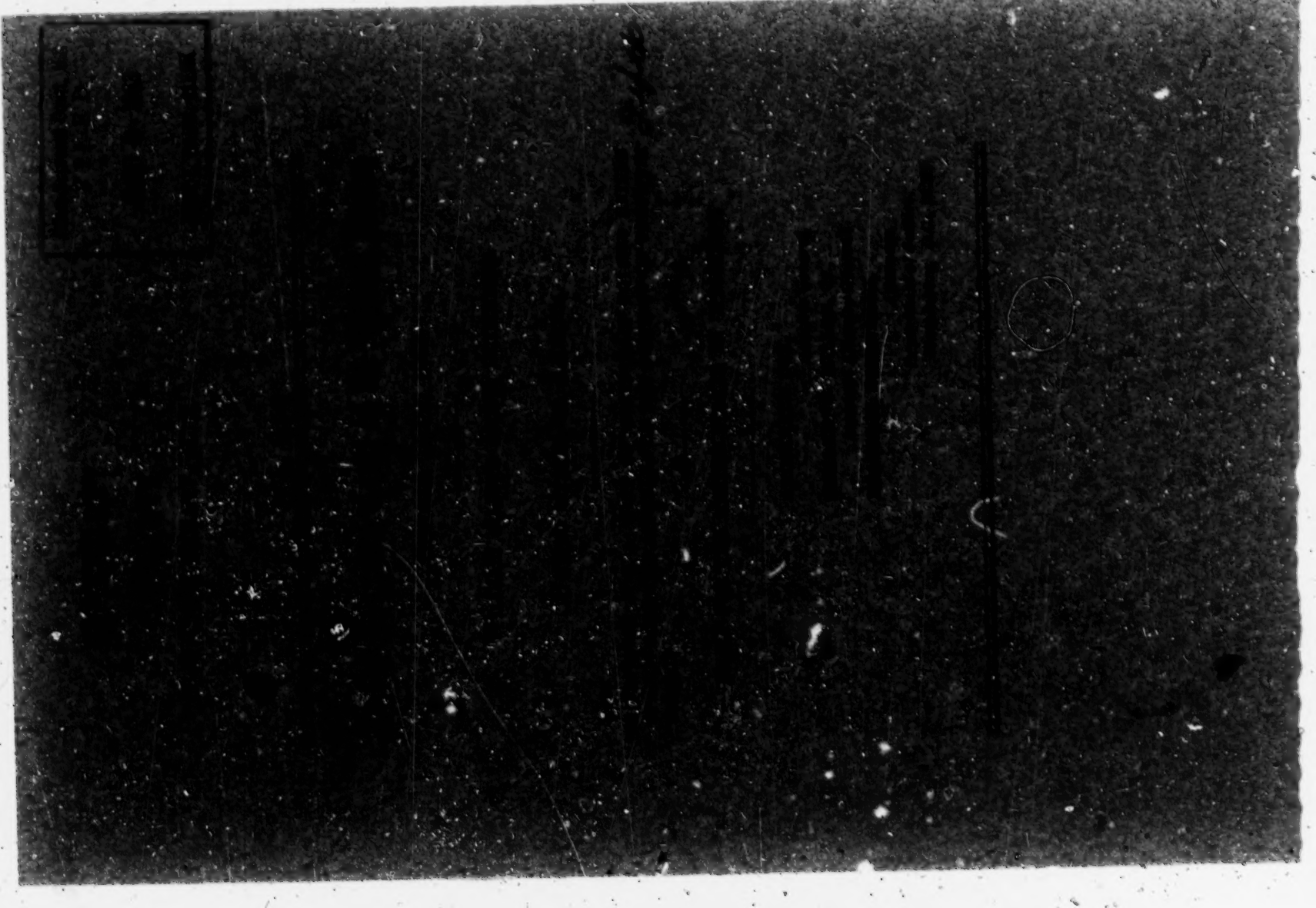

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 296

WILLIAM ALFRED RENO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ~~DISTRICT OF COLUMBIA~~ CIRCUIT

Fifth

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals is reported at 317 F. 2d 499.

JURISDICTION

The judgment of the court of appeals was entered on May 17, 1963. A petition for rehearing was denied on June 20, 1963. The petition for a writ of certiorari was filed on July 20, 1963. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether an indictment for conspiracy should have been dismissed because, in specifying the nature of the conspiracy, it charged that the defendants did certain acts, rather than that they would do certain acts.

STATEMENT

Petitioner was convicted in the United States District Court for the Southern District of Florida of conspiring with others to commit a violation of 8 U.S.C. 1324 and was sentenced to imprisonment for 30 months. The only question raised is the sufficiency of the indictment.

The indictment (R. 4–7) charged that the defendants did willfully and knowingly "conspire, combine, confederate and agree together" and with others "to commit an offense against the United States, to wit: to violate Title 8, United States Code, Section 1324, that is to say, they did knowingly and willfully" conceal, attempt to conceal and "did transport and move" the alien. At the end of this description, there is the statement "in violation of Title 18, United States Code, Section 371" (the general conspiracy statute). Before setting forth the overt acts, the indictment alleged that "in furtherance of the aforesaid conspiracy and for the purpose and object of effecting the said conspiracy" the overt acts were committed.

Petitioner, who had changed counsel shortly before trial, moved to dismiss the indictment and the motion was heard at the opening of trial (R. 12, 25–28). The district court, although expressing disapproval of the indictment, declined to dismiss it. The court of appeals affirmed, one judge dissenting.

ARGUMENT

The defect in the indictment on which petitioner relies is that, in specifying the nature of the conspiracy after the general statement that the defendants conspired to violate 8 U.S.C. 1324, the indictment al-

leged that the defendant "did" certain acts, rather than that they "would" do those acts. The claim is that this rendered it uncertain whether the indictment charged a conspiracy or three different substantive offenses of concealing, harboring and transporting the alien. No one reading the indictment as a whole could, however, have had any real doubt that it purported to charge a conspiracy. The initial charge was that defendants combined together to violate a specified statute, 18 U.S.C. 1324. After the description of the offense, the statute violated was listed as 18 U.S.C. 371, the general conspiracy statute. The overt acts were alleged to have been committed in furtherance of the "aforesaid conspiracy". To the extent that the indictment alleged that defendants "did" certain things, it gave the defendants more information than was required for it gave them notice that the government was relying on specific acts to prove the agreement. The indictment informed the defendants in detail of the charges that they had to meet and amply protected them from a later prosecution for the same offense. The majority below properly held, therefore, that it was sufficient under the test laid down by this Court in *United States* v. *Debrow*, 346 U.S. 374, 376, and *Hagner* v. *United States*, 285 U.S. 427, 431.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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AUGUST 1963.

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